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 United States of America

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

GEAN CARLO PIAGGIO, a minor, by and)
 through his guardian ad litem, NINA)
 RICHARDSON, CARLI SCHENCK,)
 ALDO PIAGGIO,)

Plaintiffs,

v.

SUTTER HEALTH, a California)
 Corporation, doing business as ALTA)
 BATES SUMMIT MEDICAL CENTER;)
 EAST BAY PERINATAL MEDICAL)
 ASSOCIATES, a Partnership; MICHAEL)
 SINGER, M.D., ECHECHUKWU EZEH,)
 M.D.; UNITED STATES OF AMERICA,*)
 and DOES 1-250, inclusive,)

Defendants.

Case No. C 10-3990

**STIPULATION TO DISMISS ACTION
 AGAINST THE UNITED STATES AND
~~PROPOSED ORDER~~**

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*Pursuant to 28 U.S.C. § 2679(d)(4), upon certification that defendants Lifelong Medical Care, a California Corporation, doing business as West Berkeley Family Practice, and Alison Roberts, R.N., were acting within the scope of their duties as employees of the United States, the United States was automatically substituted as a defendant.

1 SUBJECT TO THE APPROVAL OF THE COURT, THE PARTIES, BY AND THROUGH
2 THEIR COUNSEL OF RECORD, STIPULATE AS FOLLOWS:

3 1. This is a medical malpractice action arising from the birth of Gean Carlo Piaggio on
4 or about January 12, 2009. Plaintiffs are Gean Carlo Piaggio, a minor, by and through his Guardian
5 Ad Litem, Nina Richardson, Carli Schenck, and Aldo Piaggio.

6 2. On January 6, 2010, Plaintiffs filed a Summons and Complaint in Alameda County
7 Superior Court, against a number of defendants, including Lifelong Medical Care, and Alison
8 Roberts, R.N..

9 3. On August 19, 2010, the United States Attorney's Office for the Northern District of
10 California received notice of this pending lawsuit. On September 7, 2010, pursuant to 28 U.S.C.
11 § 1442, the United States removed this action to federal court, and certified that Lifelong Medical
12 Care and its employees are covered under the Federal Tort Claims Act.

13 4. The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2401(b), and 2671-2680
14 ("FTCA"), is a limited waiver of sovereign immunity making the United States liable for money
15 damages for personal injuries in limited circumstances. In order for there to be liability against the
16 United States, the injury must be caused by the negligent or wrongful acts or omissions of a federal
17 employee acting within the scope of employment or a person deemed to be acting in furtherance of
18 a federally-funded contract, where the United States, if a private individual, would be liable
19 according to the law of the place where the incident occurred.

20 5. Under the Federal Tort Claims Act, Plaintiffs must first exhaust administrative
21 remedies prior to filing suit against the United States.

22 6. Plaintiffs did not file an administrative claim prior to filing their state court action.

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7. Accordingly, the parties hereby agree that this action shall be dismissed against the United States, without prejudice. The action shall be remanded to the Superior Court of California, Alameda County.

Dated: September 22, 2010

Respectfully submitted,
MELINDA HAAG
United States Attorney

/s/
MELANIE L. PROCTOR¹
Assistant United States Attorney
Attorneys for the United States

Dated: September 22, 2010

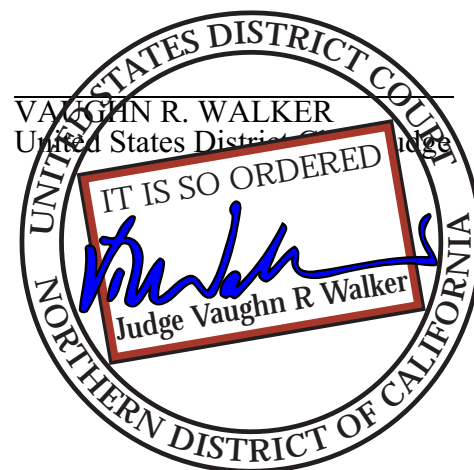
LAW OFFICES OF BRUCE G. FAGEL AND
ASSOCIATES

/s/
BRUCE G. FAGEL
THOMAS ALCH
Attorneys for Plaintiffs

~~PROPOSED~~ ORDER

Pursuant to the stipulation of the Plaintiffs and Defendant United States, IT IS SO ORDERED. The Complaint against the United States is hereby DISMISSED, without prejudice. This matter is remanded to the Superior Court of California, Alameda County. All pending deadlines are hereby VACATED. The Clerk shall close the file.

Dated 9/24/2010



¹I, Melanie L. Proctor, hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/s/) within this efiled document.